**FARAD CONTINUATION SHEET NO.**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5175 OF 2005

| | | |
|---|---|---|
| Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders. | : Coram, : : : : | Court's or Judge's Orders . |

Ms. Mutaxi Lavadia h/f M. M. Thorat for petitioner

Mr. N. G. Menon for respondent

**CORAM: SMT. RANJANA DESAI, J.**
5/9/2005

**P.C.**:-

In this writ petition, petitioner who is the original complainant has challenged order dated 28/6/05 passed by the Member Industrial Court, Mumbai in Complaint (ULP) No. 324/05.

2. It appears that the petitioner is a permanent employee of respondent 1 company. Respondent 1 has issued letter of retirement to the petitioner The letter is dated 15/6/05. It is issued under clause 20(a) of Standing Order for operatives. By the said letter respondent 1 called upon the

petitioner to retire from service on 30/6/2005 on which day he completes 60 years of age as he does not continue to be efficient.

3. The petitioner filed the instant complaint in the Industrial Court challenging the said letter and praying for consequential reliefs. In the said complaint he filed an application under Section 30(2) of the MRTU & PULP Act 1971 for interim relief. That application having been rejected the petitioner has approached this court.

4. I have heard at some length the learned counsel appearing for the petitioner. She drew my attention to standing order clause 20(a) and contended that the operative has a vested right to be in service upto the age of 63 years, if he continues to be efficient. She submited that the Industrial court has come to a conclusion that there is a strong prima facie case in favour of the petitioner and, therefore, the

Industrial Court was wrong in refusing the interim relief to the petitioner to continue to remain in service on the ground that the petitioner's dues could be calculated and he could be compensated.

5. In support of her submissions, the learned counsel relied on judgments of this Court in Maharashtra State Textile Corporation Ltd. v. Vasudev Vinayak Joshi & Ors, ILLN 191, Tata Textile Mills (U.C.) & Ors. v. Munnilal Nanhoo Yadav & Ors., 1990 (1) (LR 120., Dattu Rama Sawant v. Bharat Textile Mills N.T.C. (S.M.) Ltd., 2004 II CLR 962. and the judgment of the Andhra Pradesh High Court in V. Sambasiva Rao v. Labour Court, Guntur & Anr., 1994 II L.L.N. 90.

6. As against this Mr. Menon, the learned counsel for the respondent drew my attention to a Division Bench judgment of this court in India United Mills No. 2 v. Ram Murat Haridwar Kurmi & Ors., 1996 II CLR 716 and contended that the Industrial Court

cannot be faulted for having passed the order.

7. The judgments cited by the learned counsel for the petitioners do not deal with the situation like the one with which this court is concerned. They can have no application to the present case because here this court is concerned with an interim application . It is true that the Industrial Court has come to a conclusion that there is a strong prima facie case in favour of the petitoner. But as stated in India United Mills No.2's case (supra) allowing the interim relief application of the petitioner, at this stage tantamounts to granting him relief to which ultimately he may not be found entitled to. The industrial Court, therefore, is right in observing that if the petitioner succeeds he could be adequately compensated with the grant of wages for the period for which he is found to be out of service.

8. In my opinion, the discretionery order of the Industrial Court does not deserve to be interfered with in my writ jurisdiction. However, in the circumstances of the case, since the petitioner is out of service the complaint needs to be expedited. Hence the following order;

a) The writ petition is rejected. However, this court has not expressed any opinion on the merits of the case.

b) However, the Industrial Court, Mumbai is directed to hear and dispose of Complaint (ULP) No. 324/05 as expeditiously as possible and at any rate within a period of one year from the date of receipt of this order by it.

c) Parties are expected to cooperate and not to ask for any adjournments from the court.

.....